It is a time-honored doctrine that a property owner owes no duty to trespassers other than to avoid wilfully injuring them. He is under no obligation to keep his premises safe for them. But many courts recognize as an exception to this doctrine that one who maintains dangerous instrumentalities on his premises, with the knowledge that they are likely to attract children at play and that the danger will be latent to their childish intellects, owes them the duty of guarding or at least of warning them of the danger. The English case, *Lynch* v. *Nurdin,* (1841), 1 Q. B. 29, was the pioneer case pronouncing this exception. In 1873 the U. S. Supreme Court followed by applying the new doctrine to a case of injuries caused by a railroad turntable, allowing the infant plaintiff to recover, even though he was a trespasser. *Railroad* v. *Stout,* 17 Wall. 657. Since then hundreds of cases have raised the question. Many courts have sanctioned the doctrine, others have disapproved it, and others have subjected it to a storm of criticism. An exhaustive analysis of the subject and a citation of cases appears in 19 L. R. A. (N. S.) 1094, and the problem is discussed in 18 MICH. L. REV. 340, and 5 MICH. L. REV. 64. Specific cases have been noted as they were decided in numerous other issues of this REVIEW. The modern tendency, however, seems to be to restrict the application of the doctrine. Some courts refuse to apply it in any case. *Reid* v. *Harmon,* 161 Mich. 51. Some limit it strictly to the turntable cases. *Railway* v. *Beavers,* 113 Ga. 398. Others limit it to cases involving attractive and dangerous machinery or explosives. *Erickson* v. *Great Northern R. R.,* 82 Minn. 60. It is generally said that the danger must be latent to the child, although patent to the property owner, to impose the duty on the latter, and some courts limit the doctrine by imputing to the child a marvelous perspicacity in discerning danger. But some few courts, such as the court in the principal case, adopt the doctrine whole-heartedly and compel all property owners to exercise ordinary care to guard infant trespassers. In view of the increasing number of attractive artificial perils which have been devised by twentieth century ingenuity, the doctrine is surely a salutary one, and since the principal case is apparently the first case in which the South Dakota court has followed the doctrine of *Lynch* v. *Nurdin,* it is to be commended for coming into the column of courts which place modern social considerations above technical property rights.

OIL AND GAS—NATURE OF INTEREST HELD BY LESSEE.—In determining the amount of tax due under a statute, it became necessary to decide whether an oil and gas lease which "granted, demised, leased, and let land for the sole purpose of operating for oil and gas" gave the lessee corporeal property. The Secretary of State excluded such oil leaseholds on the ground that they were incorporeal property. In an action in the form of an injunction against the Secretary of State to restrain him from turning over to the treasurer taxes paid under protest, it was *held,* that such a lease conveys a freehold interest in the realty and is corporeal property. *Transcontinental Oil Co.* v. *Emmerson, Secretary of State,* (Ill., 1921), 131 N. E. 645.

Courts of the various states are in conflict in their holdings as to the nature of the interest created by an oil and gas lease. First, it should be

noted that there are two principal types of oil and gas leases: that type which in terms grants the exclusive right to explore for oil; and secondly, that which grants the land for the sole purpose of searching for oil. The Illinois cases, with which the principal case is in accord, hold that under either type of cases the lessee holds corporeal property. *Daughetee* v. *Ohio Oil Co.*, 263 Ill. 518; *Guffey* v. *Smith*, 237 U. S. 101. See also *Woodland Oil Co.* v. *Crawford*, 55 Ohio St. 161; *Harris* v. *Ohio Oil Co.*, 57 Ohio St. 118. Kansas, like Illinois, makes no distinction in the types of leases, but contrary to Illinois, holds that, regardless of the type of lease, incorporeal property is created. *Beardsley* v. *Kan. Nat. Gas Co.*, 78 Kan. 571; *Huston* v. *Cox*, 103 Kan. 73. Pennsylvania and California hold that a lease, which in terms grants the land, vests the lessee with a corporeal estate. *Barnsdall* v. *Bradford Gas Co.*, 225 Pa. 338; *Chandler* v. *Hart*, 161 Cal. 405. But the rule is settled in these two states that if the lease purports to grant only the exclusive right to search for oil, then the lessee has an incorporeal right. *Funk* v. *Haldeman*, 53 Pa. 229; *Brookshire Oil Co.* v. *Casmalia Oil Co.*, 156 Cal. 211. The courts, in determining the nature of the interest created by an oil and gas lease, should consider the substance rather than the form of the lease. Whatever the technical form, the underlying purpose of the lease is to give the lessee the right to take oil and gas. All other rights are mere incidents of this primary, underlying right. The right to take oil is analagous to the right to take gravel, herbage, seaweed, etc., from the land of another—commonly termed a *profit a prendre*. If this analysis is correct, the Kansas courts have reached the sound conclusion in holding that an oil lease, regardless of its form, creates in the lessee incorporeal property. For a more complete review of the cases upon the nature of the lessee's interest under an oil and gas lease, see the article on *The Law of Oil and Gas*, by James A. Veasey, 18 MICH. L. REV. 749.

RESTRICTIONS—GENERAL BUILDING PLAN—UNIFORM STYLE OF HOUSES AS NOTICE.—The owner of a tract of land laid the same out in lots in pursuance to a community scheme and sold them under certain restrictions and the representation that the whole tract was subject to them. One of these was to the effect that any dwelling erected should be used as a private home for one family only. Later he sold a lot to the defendant under a deed restricting the latter to the erection of a building to appear from the outside as a one-family house, to be used by not more than two families. The defendant began to erect a two-family type of house. Seven of the restricted lot owners sued to enjoin him from so doing. *Held*, the nature of the building restriction imposed on him and the uniformity of the houses in the restricted area were circumstances sufficient to put a reasonable man on inquiry, and hence to charge the defendant with notice of the general plan. *Shoyer et al.* v. *Mermelstein*, (Ct. of Chancery, N. J., 1921), 114 Atl. 788.

It is well settled that an owner of land may, by contract with the purchasers of successive parcels, affect the remaining parcels with an equity requiring them to be occupied in conformity to a general plan, provided that each subsequent purchaser is charged with notice of the plan, and regardless